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February 10, 2020

By CM/ECF

The Hon. Peter R. Marksteiner
Circuit Executive and Clerk of Court
United States Court of Appeals for the Federal Circuit
717 Madison Place, N.W.
Washington, D.C. 20439

Re: Notice of Supplemental Authority in *B/E Aerospace, Inc. v. C&D Zodiac, Inc.*, Nos. 2019-1935, 2019-1936

Dear Col. Marksteiner:

B/E Aerospace hereby responds to Zodiac's Notice of Supplemental Authority, ECF No. 49, which identifies a decision from this Court, *Koninklijke Philips N.V. v. Google LLC*, No. 2019-1177, slip op. (Fed. Cir. Jan. 30, 2020) ("*Philips*").

Zodiac argues that *Philips* supports its argument that "the PTAB properly relied upon . . . **references that were not printed publications** as evidence of what would have been in the common knowledge" of the POSA (emphasis added). But neither party disputed the printed publication prior art status of the references at issue in *Philips*—"SMIL 1.0" and "Hua." *Philips* at 4. Instead, *Philips* disputed the propriety of combining the allegedly incompatible teachings of these references, and the use of Hua as evidence of "common knowledge" in a single-reference SMIL 1.0 obviousness ground. *Philips* at 13-14.

Philips affirms noncontroversial propositions: that is not *per se* improper for an IPR petitioner to cite prior art printed publications as evidence of the knowledge of the POSA (whether or not such publications are part of an IPR ground), and that neither § 311(b) nor *Arendi* bar the use of **adequately supported** expert opinion about "general knowledge" for teachings regarding a claim limitation that is absent from the art cited in an IPR ground. *See Philips* at 11-14.

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The confidential material cited by Zodiac's expert as alleged evidence of "general knowledge" was never shown to be printed publication prior art. *See, e.g.*, Op. Br. (ECF No. 26) at 9-13, 18-25. Whether § 311(b) and/or *Arendi* allow this material to be the basis for Zodiac's expert's opinion about the knowledge of the POSA (*see id.* at 26-27) was not at issue in *Philips*. Indeed, *Philips* acknowledges that obviousness analysis requires assessing the "background knowledge **possessed** by a person having ordinary skill in the art," *Philips* at 12 (quoting *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 401 (2007)) (emphasis added), and Zodiac never showed that the documents relied upon by its expert were available to a POSA. *See* Op. Br. at 10-11.

Sincerely,

/s/ Michael Fleming

Michael Fleming

cc: Counsel of Record (via ECF)

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

CERTIFICATE OF SERVICE

I certify that I served a copy on counsel of record on February 10, 2020 by:

U.S. Mail
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/s/ Michael Fleming

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